



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-238482.2

September 18, 1992

Henry, Watz, Gardner and Sellars
Victorian Square - Suite 314
401 West Main Street
Lexington, Kentucky 40507

Attention: James W. Gardner

Gentlemen:

Your letter of March 18, 1992 appeals the determination of the Defense Finance and Accounting Service that no survivor benefits are payable to the heirs of Ah Doo, a deceased retired member of the U.S. Navy.

In B-238842, July 5, 1991, 70 Comp. Gen. _____, we concluded that the barring act, 31 U.S.C. § 3702(b), did not bar the payment of military retired pay and survivor benefits, if any, withheld from payment to Ah Doo, a retired Navy member who resided in China until his death in 1965, or to his survivors, during the period when relations between the United States and China were severed. Relations were severed in 1949 and renewed in 1989. We remanded the case to the Navy for settlement after its determination of the amounts of military retired pay and any survivor benefits actually withheld during the period in question and the proper payees of any such amounts.

A March 2, 1992 letter from the Defense Finance and Accounting Service confirms that back retired pay has been, in fact, paid to the proper beneficiary, as contemplated by our decision. The letter also states that "as no survivor benefits appear to have been elected, and no premiums were paid, we take the position that no such payments are owing."

You argue that it would not have been possible for Ah Doo to have elected or rejected survivor benefits or to have paid premiums for them during the period that diplomatic relations were severed between China and the United States. You request that survivor benefits be awarded and that any premiums due for the period between 1949, the year relations were terminated, and 1965, the year of Ah Doo's death, be deducted from the amount otherwise due the survivors.

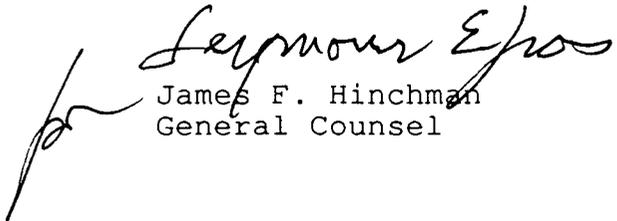
We are not aware of any authority that would allow retroactive establishment of survivor benefits under the circumstances of this case. The Uniformed Services

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Contingency Option Act of 1953, 67 Stat. 501, (1953), currently codified at 10 U.S.C. § 1431 et seq, initially provided survivor benefits for retired military members. That law permitted already retired military members to elect survivor benefit coverage within 180 days of its passage. The law, however, clearly requires that any such election have been made by the retired member within the time specified. It contains no exceptions for the occurrence of situations beyond the member's control that may have contributed to missing the deadline.

We accordingly must deny your request that survivor benefits be provided Ah Doo's survivors.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "James F. Hinchman". The signature is written in dark ink and is positioned above the typed name and title.

James F. Hinchman
General Counsel